

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

NICHOLAS P. GARTELOS,)	
)	
Plaintiff,)	
)	
v.)	No. 4:07CV1910 DJS
)	
UNKNOWN JUDGE, et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of Nicholas Gartelos for leave to commence this action without prepayment of the filing fee pursuant to 28 U.S.C. § 1915. Upon consideration of the financial information provided with the motion, the Court finds that plaintiff is financially unable to pay any portion of the filing fee. As a result, plaintiff will be granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Additionally, the Court has reviewed the complaint and will dismiss it pursuant to 28 U.S.C. § 1915(e)(2)(B).

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if “it lacks an arguable basis in either law or in fact.”

Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief can be granted if a plaintiff does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The Complaint

Plaintiff brings this action pursuant to 42 U.S.C. § 1983. Named as defendants are Unknown Judge, 22nd Judicial Circuit, State of Missouri; the City of St. Louis, Missouri; and the State of Missouri. Plaintiff seeks monetary and injunctive relief.

Plaintiff alleges that on September 26, 2007, he was in court before Unknown Judge. Plaintiff claims that Unknown Judge insulted him and overruled his objections. Plaintiff says that an unknown bailiff “manhandled” him as he left the courtroom. Plaintiff alleges that no records of the proceedings were kept.

Discussion

The complaint fails to state a prima facie case under § 1983 because the allegations do not rise to the level of a constitutional violation. Parratt v. Taylor, 451 U.S. 527, 535 (1981). As a result, the complaint should be dismissed under 28 U.S.C. § 1915(e)(2)(B).

Furthermore, the complaint is legally frivolous as to defendant Unknown Judge because he is “entitled to absolute immunity for all judicial actions that are not ‘taken in a complete absence of all jurisdiction.’” Penn v. United States, 335 F.3d 786, 789 (8th Cir. 2003) (quoting Mireles v. Waco, 502 U.S. 9, 11-12 (1991)).

To state a claim against a public entity, plaintiff must allege that a policy or custom of the public entity was responsible for the alleged constitutional violation. Monell v. Department of Social Services, 436 U.S. 658, 690-91 (1978). The complaint does not allege that any governmental policy or custom was responsible for the alleged constitutional violations. As a result, the complaint fails to state a claim against defendants City of St. Louis or State of Missouri, and it will be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. #2] is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff's motion to appoint counsel [Doc. #4] is **DENIED** as moot.

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

An appropriate order of dismissal shall accompany this Memorandum and Order.

Dated this 29th day of November, 2007.

/s/Donald J. Stohr
UNITED STATES DISTRICT JUDGE